



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Served: October 23, 1997

Issued by the Department of Transportation
on the 17th day of October, 1997

Essential Air Service at

TOPEKA, KANSAS

under 49 U.S.C. 41731 *et seq.*

Docket OST-96-1352

**ORDER REVISING SERVICE LEVEL AND SUBSIDY RATE,
AND TENTATIVELY RESELECTING CARRIER**

Summary

By this order, the Department is authorizing an increased service level and subsidy rate for the subsidized essential air service provided by Air Midwest, Inc., d/b/a US Airways Express, at Topeka, Kansas, beginning on or about December 1, 1997, through the remainder of the carrier's present rate term ending December 27, 1997. In addition, the order tentatively reselects Air Midwest to provide subsidized service at Topeka for a further two-year period, and provides for objections and competing proposals from other interested carriers.¹

Background

By Order 96-1-8, January 11, 1996, the Department last selected Air Midwest to provide subsidized service at Topeka for the two-year period ending December 27, 1997. Air Midwest was selected to operate ten nonstop round trips a week between Topeka and Kansas City with 19-seat Beech 1900 aircraft at an annual subsidy rate of \$102,362.

The Department's authorization of ten round trips a week at Topeka reflected program-wide cutbacks implemented in November 1995 as a result of Congressional reductions in funding for the essential air service program.² Previously, the Department had subsidized 24 round trips a week at Topeka -- four each weekday and weekend.

Congress provided a funding level of \$50 million for the program that began in fiscal year 1998 - *i.e.*, October 1, 1997. These funds are provided for by the Rural Air Service Survival Act, which was part of the Federal Aviation Administration Reauthorization Act of 1996. The Department is using these funds to restore compliance with the statutory essential air service requirements in the Airport and Airway Safety and Capacity Expansion Act of 1987 which in turn we find imperative for communities to regain traffic and promote growth. Therefore, we requested that Air Midwest submit a proposal contemplating increased service at Topeka for the remainder of its present rate term, and for a new two-year rate term beginning December 28, 1997.

¹ See Appendix A for a map.

² See Orders 95-11-28, November 17, 1995, and 96-2-1, February 2, 1996.

Moreover, under our normal procedures when nearing the end of a subsidy rate term, we contact the incumbent carrier to determine whether it is interested in continuing service and whether it will continue to require subsidy. We usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting it for a new rate term at the agreed rate, and direct other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in response to the order; if any such proposals are filed, we process them as a competitive case. Consistent with this practice, we asked Air Midwest if it wished to submit a proposal for the continuation of its service at Topeka, since the current rate term will expire on December 27, 1997.

Air Midwest's Proposal

Air Midwest submitted a proposal in response to our request and, as a result of discussions with Department staff, has agreed to operate four nonstop Topeka-Kansas City round trips each weekday and weekend with Beech 1900 aircraft through the remainder of its present rate term, December 27, 1997, at the annual subsidy rate of \$367,662. In addition, Air Midwest has agreed to provide this increased service level at Topeka for a further two-year period, from December 28, 1997, through December 27, 1999. The annual subsidy rate would be \$367,662 for the first year of the new two-year rate term, and \$126,527 for the second year.

Decision

After a thorough review of Air Midwest's proposal and its recent service history, we have decided to select it to provide the proposed increased service at the agreed subsidy rate of \$367,662 from December 1, 1997, or when the increased service level is implemented, through the remainder of the carrier's present rate term -- December 27, 1997.³ In addition, we will tentatively reselect Air Midwest to provide subsidized service at Topeka for a further two-year rate period, from December 28, 1997, through December 27, 1999, at the agreed-to subsidy rates of \$367,662 and \$126,527 annually for the first and second year, respectively. These rates appear reasonable for the service proposed and Air Midwest's performance continues to be reliable.

When the Department implemented the program-wide subsidy cuts in November 1995, subsidized service at all subsidized communities, except those in Alaska, was reduced below statutory minimums and well below viable levels. As a result, substantial traffic declines occurred at most communities, and carriers experienced cost inefficiencies in aircraft and personnel utilization. With the full funding anticipated for fiscal year 1998, the Department now expects to restore viable service at all of the subsidized communities to levels that are commensurate with statutory and program guidelines.⁴

In this case, we have reviewed Air Midwest's proposal and the community's traffic history and find that the provision of additional service is appropriate. Although Topeka is only 71 highway miles from a major airport at Kansas City, it has generated significant passenger levels when frequent service was provided in previous years. For example, as recently as 1993, Topeka averaged 70 passengers a day, 35 inbound and 35 outbound. If these passenger levels can be reattained with a four-round-trip-a-day service level passenger loads would average about nine per flight and subsidy need should decrease to almost nothing when our next rate-renewal review comes up in late 1999. (See Appendix C for traffic history.) Toward that end, we expect Air Midwest, civic officials, and major businesses to work energetically together to promote the service improvements. In that

³ Appendix B contains details of the carrier's compensation requirement.

⁴ 49 U.S.C. 41732(b)(1)(A) specifies that eligible communities are to receive at least two round trips a day, six days a week; moreover, the Department's program guidelines (14 CFR 398.5) contemplate service levels commensurate with a community's historical traffic and traffic-generating potential.

regard, we have earmarked in Air Midwest's subsidy rate a specific dollar amount for local advertising, and fully expect the carrier to use that amount as proposed.

Responses to Tentative Decision

We will give interested persons 20 days from the date of service of this order to show cause why we should not make final our tentative decision to reselect Air Midwest to provide essential air service at Topeka at the subsidy rates discussed above for a further two-year period through December 27, 1999. We expect persons objecting to our tentative decision to support their objections with relevant and material facts. We will not entertain general, vague or unsupported objections.

Carriers interested in filing competing proposals, with or without subsidy requests, should file them within the 20-day period set for objections. At the end of that period, our staff will docket any competing proposals, thereby making them public, and direct each applicant to serve a copy of its proposal on the civic parties and other applicants. We will give full consideration to all proposals that are timely filed. As a general matter, we request proposals that contemplate 24 nonstop round trips each week between the community and Kansas City or some other suitable hub with twin-engine aircraft operated by two pilots.

Service History and Traffic Data

The recent service history of the community is discussed in the background above. In order to help carriers make their passenger and revenue forecasts, we have included historical traffic data in Appendix C. During calendar year 1996, the most recent 12-month period for which traffic data are available, Topeka averaged 9.3 enplanements per day.

Procedures for Filing Replacement Proposals

For interested carriers unfamiliar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f), and discusses in detail the process of requesting proposals, conducting reviews of applicants, and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, a copy of Part 204 of our regulations (14 CFR 204), and schedules setting forth our recommended form for submitting data required for calculating compensation and determining the financial and operational ability of applicants to provide reliable essential air service. (Section 204.4 describes the fitness information required of all applicants for authority to provide essential air service.) Applicant carriers that have already submitted this information in another case need only resubmit it if a substantial change has occurred. However, if there are more recent data or if there have been any changes to the information on file, carriers should provide updates of those information elements. Interested carriers that need to obtain copies of these documents may contact the Office of Aviation Analysis at (202) 366-1053.

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.⁵ Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

Community and State Comments

If we receive competing proposals, the community and state are welcome to submit comments on the proposals at any time. Early in the proceeding, comments on the proposals' strengths and weaknesses would be particularly helpful, and the civic parties may also express a preference for a particular carrier, if they choose. In any event, after conducting rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments.⁶

This order is issued under authority delegated in 49 CFR 1.56(i).

ACCORDINGLY,

1. We revise the service provided by Air Midwest, Inc., d/b/a US Airways Express, at Topeka, Kansas, as described in Appendix D, for the period from December 1, 1997, or when Air Midwest implements the increased service, through December 27, 1999;
2. We set the final rate of compensation for Air Midwest, Inc., d/b/a US Airways Express, for the provision of essential air service at Topeka, Kansas, as described in Appendix D, for the period beginning on or about December 1, 1997, or when Air Midwest implements the increased service, through December 27, 1997, payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling set forth in Appendix D and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by \$149.82;⁷
3. We tentatively reselect Air Midwest, Inc., d/b/a US Airways Express, to provide essential air service at Topeka, Kansas, as described in Appendix D, for the period from December 28, 1997, through December 27, 1999;
4. We tentatively set the final rates of compensation for Air Midwest, Inc., d/b/a US Airways Express, for the provision of essential air service at Topeka, Kansas, as described in Appendix D, for the period from December 28, 1997, through December 27, 1999, payable as follows: for each

⁵ The regulations applicable to each of these three areas are (1) 49 CFR Part 20, New Restrictions on Lobbying, implementing 31 U.S.C. 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants), implementing the Drug-Free Workplace Act of 1988; and (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

⁶ In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not normally hold rate conferences. Instead, we rely on the carrier's subsidy-free service as proposed.

⁷ See Appendix D for the calculation of this rate, which assumes the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, revision of this rate may be required.

month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceilings set forth in Appendix D, and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by the following amounts:⁸

For the first year:	December 28, 1997 through December 27, 1998	\$149.82
For the second year:	December 28, 1998 through December 27, 1999	\$51.56

5. We direct Air Midwest, Inc., d/b/a US Airways Express, to retain all books, records, and other source and summary documentation to support claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carriers may forfeit their compensation for any claims that are not supported under the terms of this order;

6. We find that Air Midwest, Inc., d/b/a US Airways Express, continues to be fit, willing and able to operate as a commuter carrier and capable of providing reliable essential air service at Topeka, Kansas;

7. We direct Air Midwest, Inc., d/b/a US Airways Express, and any other interested persons having objections to the selection of Air Midwest to provide essential air service as described in ordering paragraph 3 above, at the rates set forth in ordering paragraph 5 above, to file such objections or competing service proposals no later than 20 days from the date of service of this order;⁹

8. If we receive objections or competing service proposals within the 20-day period, Air Midwest will be compensated at the subsidy rates set forth in ordering paragraph 2 or 4 above, as appropriate, as a final rates until all objections are resolved;

9. We will afford full consideration to the matters and issues raised in any timely and properly filed objections and service proposals before we take further action.¹⁰ If no objections or competing service proposals are filed, all further procedural steps will be deemed waived and this order shall become effective on the twenty-first day after its service date;

10. This docket will remain open until further order of the Department; and

11. We will serve copies of this order on the Mayor and airport manager of Topeka, Kansas; the Governor of Kansas, the Kansas Department of Transportation, Air Midwest, Inc., d/b/a US Airways Express; Mesa Air Group, d/b/a United Express; and the persons listed in Appendix E.

By:

⁸ See Appendix D for the calculation of these rates, which assume the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, revision of these rates may be required.

⁹ Objections should be filed with the Documentary Services Division, SVC-121.30, Room PL 401, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590. Proposals to provide essential air service should be filed with the Chief, EAS and Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, at the same address. Questions regarding filings in response to this order may be directed to Dennis J. DeVany at (202) 366-1061.

¹⁰ Since we are providing for the filing of objections to this order, we will not entertain petitions for reconsideration.

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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HISTORICAL ENPLANEMENTS AT
TOPEKA, KANSAS

	<u>ENPLANEMENTS</u>	<u>DAILY AVG.</u>
1989	13,837	44.2
1990	11,515	36.8
1991	6,327	20.2
1992	9,475	30.3
1993	10,903	34.8
1994	7,867	25.1
1995	5,518	17.6
1996	2,909	9.3

SOURCE: RSPA Form 298-C, Schedule T-1. Daily averages are based on 313 days each year.

NOTE: Air Midwest provided service from Topeka to Kansas City until October 1989, when it shifted Topeka's hub from Kansas City to St. Louis. In January 1991, Air Midwest sold its St. Louis operations to Trans States Airlines, which initially maintained service into St. Louis. In May 1991, however, Trans States suspended this service and Air Midwest resumed Topeka-Kansas City operations.

**AIR MIDWEST
ESSENTIAL AIR SERVICE AT
TOPEKA, KANSAS**

EFFECTIVE PERIOD:	Beginning when the higher service level is implemented, on or about December 1, 1997, through December 27, 1999
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SERVICE:	24 nonstop round trips each week between Topeka and Kansas City (55 miles)
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AIRCRAFT TYPE:	Beech 1900 -- 19 seats
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TIMING OF FLIGHTS:	Flights must be well-timed and well-spaced to ensure full compensation.
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ANNUAL SUBSIDY RATE:

First year of service	\$367,662
Second year of service	\$126,527

**SUBSIDY RATE PER
DEPARTURE/ARRIVAL:**

First year of service	\$149.82 ¹
Second year of service	\$51.56 ¹

**COMPENSATION CEILING
EACH WEEK:**

First year of service	\$7,191.36 ²
Second year of service	\$2,474.88 ³

¹ Topeka is scheduled to receive 24 departures to Kansas City and 24 arrivals from Kansas City a week. For the period beginning on or about December 1, 1997, through December 28, 1998, annual compensation of \$367,662 divided by the number of flights scheduled annually to Kansas City and from Kansas City, calculated by multiplying:
8 arrivals/departures per service day x 313 days x 0.98 completion factor: \$367,662/2,454=\$149.82. For the period from December 28, 1998, through December 27, 1999, annual compensation of \$126,527 divided by the number of flights scheduled annually to Kansas City and from Kansas City: \$126,527/2,454=\$51.56.

² The subsidy rate per arrival/departure (\$149.82) times 48 scheduled subsidy-eligible flights each week.

³ The subsidy rate per arrival/departure (\$51.56) times 48 scheduled subsidy-eligible flights each week.

N O T E

The carrier has been notified that it may forfeit its eligibility for compensation for any flights that it does not operate in full conformance with the terms and stipulations of this order, including the service plan outlined in this order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with this order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of this order during the applicable period of this order, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be assured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly subsidized points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the agreed amounts or at the agreed service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the parties to this order do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

SERVICE LIST FOR THE STATE OF KANSAS

Air Midwest, Inc.
Amerijet International, Inc.
Aspen Airways, Inc.
Delta Connection
Exec Express II, Inc.
Executive Airlines, Inc.
Flagship Airlines, Inc.
GP Express Airlines, Inc.
Lone Star Airlines, Inc.
Mesa Airlines, Inc.
Metroflight, Inc.
Midway Airlines, Inc.
Midwest Express Airlines, Inc.
Multi Aero, Inc.
Northwest Airlink
Redwing Airways, Inc.
Renown Aviation, Inc.
Trans States Airlines, Inc.

John Albright
Louis Andrews
Ken Bannon
E.B. Freeman
A. Edward Jenner
Keith Kahle
John McFarlane
Bill Oakes
Kevin Thomas
Robert Wigmore